

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

UNITED STATES OF AMERICA) CAUSE NO. 5:11-CR-015
(
vs.)
(NOVEMBER 13, 2012
) AMARILLO, TEXAS
KHALID ALI-M ALDAWSARI (9:00 A.M.

SENTENCING

BEFORE THE HONORABLE DONALD E. WALTER
UNITED STATES DISTRICT JUDGE

SHAWN M. McROBERTS, RMR, CRR
1100 COMMERCE STREET, RM. 1654
DALLAS, TEXAS 75242
(214) 753-2349

A P P E A R A N C E S

FOR THE GOVERNMENT: UNITED STATES ATTORNEY'S OFFICE
1205 TEXAS AVENUE, 7TH FLOOR
LUBBOCK, TEXAS 79401
(806) 472-7351
BY: MR. JEFFREY HAAG
MS. DENISE WILLIAMS

U.S. DEPARTMENT OF JUSTICE
NATIONAL SECURITY DIVISION
950 PENNSYLVANIA AVENUE, NW
ROOM 1538
WASHINGTON, DC 20530
(202) 514-7259
BY: MR. DAVID CORA

FOR THE DEFENDANT: COGDELL LAW FIRM, PLLC
1401 MCKINNEY STREET
SUITE 1625
HOUSTON, TEXAS 77010
(713) 426-2244
BY: MR. DAN COGDELL
MR. J. DAVID HESTER

PAUL DOYLE & ASSOCIATES
600 TRAVIS, SUITE 4700
Houston, TEXAS 77002
(713) 228-9200
MR. PAUL DOYLE

OFFICIAL COURT REPORTER: SHAWN M. McROBERTS, RMR, CRR
1100 COMMERCE STREET, RM. 1654
DALLAS, TEXAS 75242
(214) 753-2349

1 THE COURT: Good morning. You may be seated.

2 Mr. Aldawsari, you have received a copy of the
3 presentence report, I believe?

4 THE DEFENDANT: Yes.

5 THE COURT: And you have reviewed it with your
6 counsel?

7 THE DEFENDANT: Yes, I did.

8 THE COURT: And I have noted the objections that
9 have been filed--the first one on the obstruction of justice,
10 and the rest on the question of following the Guidelines or
11 not. Is that right, Mr. Cogdell?

12 MR. COGDELL: That is right, Your Honor.

13 THE COURT: Is that correct, Mr. Aldawsari?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. You may be seated.

16 Mr. Haag, I have read your report and sentencing
17 memorandum, as I have read Mr. Cogdell's. Is there anything
18 else you want to say to me?

19 MR. HAAG: Yes, Your Honor. We do have one witness,
20 and we do have brief argument.

21 THE COURT: Put on your witness.

22 MR. HAAG: Yes, Your Honor.

23 MR. DOYLE: Judge, if I could, this witness is the
24 bomb expert, and I believe what he is going to try and
25 introduce is that video that you have already excluded at

1 trial, and I would object to the video --

2 THE COURT: Is that right?

3 MR. HAAG: Your Honor, yes, we intend to play --

4 THE COURT: I am fairly aware of what roughly 15
5 pounds of plastique can do. Do you really want to do that?

6 MR. HAAG: Your Honor, we do believe it will give
7 the Court a full picture of the object of Mr. Aldawsari's
8 crime.

9 THE COURT: As I say, 12, 15 pounds, isn't that what
10 your expert said was recoverable at a minimum?

11 MR. HAAG: Seven pounds and fifteen pounds; yes,
12 Your Honor.

13 THE COURT: Okay. I think not. I don't think it
14 will add anything.

15 Anything else you want to say?

16 MR. HAAG: Just brief argument and response, Your
17 Honor.

18 THE COURT: All right. Well, have a seat.

19 MR. HAAG: Your Honor, if I could, like to put the
20 two videos into evidence, even though we don't play them, just
21 for appeal purposes.

22 THE COURT: Sure.

23 MR. HAAG: Those would be Government's Exhibit
24 No. 387 and 395.

25 THE COURT: All right. They are received.

1 All right. Mr. Cogdell, who wants to talk to me first?

2 MR. COGDELL: Sure, Your Honor. Good morning, Your
3 Honor.

4 THE COURT: Good morning, sir.

5 MR. COGDELL: Judge, as you know, we filed a rather
6 extensive sentencing memorandum last week. I apologize to
7 some extent for the timing of it. I know it was filed
8 somewhat late, but it was filed in response to the
9 Government's. I had surgery last week, and on a more helpful
10 and positive note, Mr. Hester, who did the lion's share of the
11 work, he was otherwise occupied, so for the timing of it I
12 apologize.

13 THE COURT: Not to worry.

14 MR. COGDELL: I am going to be brief, Judge. In the
15 landscape of attempted use of a weapon of mass destruction,
16 there are really three sources of categories, as the
17 memorandum points out.

18 The first are the types of cases where a life sentence is
19 generally warranted, and those types of cases is where the
20 Defendant attempts to use or does use a fully constructed
21 weapon of mass destruction. As the memo points out, the *Reid*
22 case which is the Shoe Bomber case, the *Shahzad* case which is
23 the Times Square bombing, and I am not going to pronounce the
24 name, I won't do it justice, the *Abdulmattab* case was the
25 Christmas Day Bomber, in each of those cases where a life

1 sentence was warranted there was an actual weapon of mass
2 destruction, there was no question an attempted detonation of
3 that weapon of mass destruction, and there were generally
4 aggravating factors beyond that.

5 THE COURT: Mr. Cogdell, in many ways that is what
6 happened here. The cases that you cited, and in particular I
7 see you cited one I just read about in the New York Times that
8 took place in Boston, there were whiffs of entrapment, and
9 they never were going to set off -- They were going to be
10 stopped from setting it off.

11 MR. COGDELL: Yes, sir.

12 THE COURT: But for the grace of God, luck, fate,
13 whatever you want to call it, that is what would have happened
14 here.

15 MR. COGDELL: Well, two responses. The first is, in
16 the life cases there were -- There are really three
17 categories--the life cases, the sort of 20- to 30-year cases,
18 and then the cases below 20 years. In the 20- to 30-year
19 cases, which I believe the Court is noting, those cases dealt
20 with where an inert bomb or inert weapon of mass destruction
21 was delivered to the defendant, the defendant believed that --

22 THE COURT: Pushed the button.

23 MR. COGDELL: He was going to activate it. There
24 was the one in Dallas where he drove a van parked it -- or
25 SUV, parked it beneath --

1 THE COURT: Went around the block.

2 MR. COGDELL: Went around the block and went for a
3 safe distance. The other was where an individual was going to
4 fly a remote controlled airplane into the Pentagon.

5 THE COURT: That is the Boston case.

6 MR. COGDELL: -- and the state capitol. They drove
7 from Boston, he did surveillance, he actually believed and
8 pushed the button --

9 THE COURT: In this case, oddly enough--I am going
10 to ask the Government about this--they recommended 17 years.

11 MR. COGDELL: They did. They did. And I don't want
12 to run afoul of any rulings. I think 17 years is an
13 appropriate resolution in this case. Had we been offered
14 something in that zip code, we wouldn't have been here for a
15 week. But be that as it may, it is self-evidence that the
16 Government didn't recommend that in this case.

17 But in those cases -- And we are not claiming entrapment,
18 and we are not disavowing our responsibility here or the
19 finding of the jury, but in those 20- to 30-year cases, it is
20 unquestionable that there was an attempted or belief on the
21 part of the defendant, unlike here, that a bomb would be
22 detonated. And unlike here, in those 20- to 30-year cases,
23 there was a specified target. And unlike here in those 20- to
24 30-year cases, there was every reason on the part of the
25 defendant in those cases to believe that when he was pushing

1 the button it would actually detonate.

2 I understand the Court's "but for the grace of God,
3 go we all," and this type of analysis, but I still think it is
4 paramount and critical that we distinguish between the mens
5 rea and the actus rea--that is, the evil intent and the
6 actuality of it. I am not condoning for a second what
7 Mr. Aldawsari was convicted of doing, but when you look at the
8 cases similar to and parallel to his conduct -- And again,
9 Judge, we pointed out in the brief, but I believe that the
10 best example is the *Polk* case where, in fact, I think the
11 facts are more egregious in the *Polk* case, because there was a
12 specified target, that being the IRS building in Austin, and
13 that case, like this case, there was not a completed bomb, he
14 didn't possess an actual weapon of mass destruction, although
15 he had many of the precursor --

16 THE COURT: Mr. Cogdell, not to cut you off, I read
17 those, but what has troubled me most in this case is
18 20-year-olds don't have a great deal of sense. That is a
19 proven fact.

20 MR. COGDELL: I have a 20-year-old. I agree.

21 THE COURT: He was 20 years old. He apparently
22 behaved well for a year in Vanderbilt where, according to the
23 pictures that you sent me, he had friends, and things seemed
24 to be going along just fine. And then he seems to have come
25 to Texas Tech, gotten into a quarrel with at least one of his

1 friends, and, for whatever reason, he appears to have divorced
2 himself from society, busted out of Texas Tech, came over to
3 school--I have forgotten the name of the school right now--and
4 apparently spent most of his time watching television programs
5 designed to carry on attacks against the United States. He
6 continued to watch them.

7 MR. COGDELL: Yes, sir.

8 THE COURT: He then planned to make plastique, and
9 he had plans, for once it was made, places to use it.

10 MR. COGDELL: Yes, sir.

11 THE COURT: What is giving me the trouble is his
12 history until he started watching all that stuff. Tell me
13 what happened. I am going ask him what happened. I don't
14 know whether he is going to answer me or not.

15 MR. COGDELL: I think what happened, Judge, is
16 fairly well detailed in Doctor Atiq's reports and Doctor
17 Brown's findings. I think he assimilated himself well at
18 Vanderbilt, he was surrounded by a social network that gave
19 him some support and gave him a reason to believe that he
20 could succeed. When he transferred or was transferred to
21 Texas Tech, for whatever reason, that community and he was a
22 literal disconnect.

23 THE COURT: I don't like that argument at all that
24 the fundamentalist Texas Tech helped convert him.

25 MR. COGDELL: I am not disparaging either Lubbock or

1 Texas Tech. It wasn't a fit. I think, for whatever reason,
2 Judge, and I am not disparaging the folks in Lubbock or the
3 people at Texas Tech, or any group of people, I am saying the
4 fit--psychologically, academically, socially, whatever--at
5 Vanderbilt was a far better fit than the one that he
6 experienced in Lubbock and, as a result of that disconnect, I
7 believe it is pretty well documented that he slipped into a
8 major depressive episode that caused him literally a
9 psychological break with reality. And watching the jihadist
10 films and watching -- getting on the internet was -- an escape
11 is too mildly put, but I think it gave him a very misguided
12 path and a very misguided focus.

13 I can't explain it any better than Doctor Brown or Doctor
14 Atiq did, but I believe that both of those psychiatrists tell
15 us that with the proper medication and psychological
16 intervention, that his risk of threat ultimately is far, far
17 lower than the Government believes it to be.

18 So from a 3553 factor, I do believe that the Court should
19 take into consideration that disconnect he experienced there,
20 and I do believe that the 20 or year less cases are a better
21 fit and a more apropos sentence in this case than the life
22 cases--for the psychological effects, for the assimilation
23 effects, and for again, Judge, the difference between the mens
24 rea and the actus rea--the difference between what he thought
25 about doing and then what was ultimately done. I don't think

1 we can divorce those factors at all. I think the
2 individuals that --

3 THE COURT: Aren't there -- Don't you suspect that
4 there are a few Aldawsaris out there?

5 MR. COGDELL: I have no doubt that there are a few
6 Aldawsaris out there, but they are not before this --

7 THE COURT: That is true. But one of the things I
8 have to consider is the deterrent effect.

9 MR. COGDELL: Fair and agreed. But two responses,
10 Judge. One, I have never -- And I have never worn the black
11 robes and sentenced people, so it is easier for me to say this
12 than perhaps --

13 THE COURT: When I was a prosecutor it was real
14 easy.

15 MR. COGDELL: It is perhaps easier for the Court
16 and/or prosecutor to do it. But I have never believed in sort
17 of the general deterrent if we sentence this Aldawsari, if you
18 will, to a 30 or above sentence, it is going to deter the next
19 Aldawsari from similar conduct. I don't think that when they
20 are engaged in that conduct either, A, if they are truly
21 jihadist and they truly believe that there is an afterlife
22 that will benefit them, I don't think a sentence -- an earthly
23 sentence, if you will, is going to deter it.

24 The other part of that is that I do not believe that they
25 believe that they are going to get caught or that the same

1 thing will happen to them.

2 So I understand the need for general deterrence. I also
3 understand the need for specific deterrence. But most of all,
4 I believe that he should be punished for what he did and not
5 for what somebody else might do in the future, and for what he
6 did being different than people who the Government wishes him
7 to be similarly situated against or sentenced against whose
8 conduct was far more egregious than that of Mr. Aldawsari.

9 THE COURT: Thank you, sir.

10 MR. COGDELL: Yes, sir.

11 And in closing, I know, Judge, how difficult a sentencing
12 situation this is. I think everyone of us in this room gets
13 that. I appreciate more than you know the trial without
14 -- And we will not be representing Mr. Aldawsari on appeal, I
15 don't believe, but without eroding the appellate issues that
16 might present themselves on appeal, I appreciate more than you
17 know this Court's conduct during the trial of Mr. Aldawsari.
18 He does, too. Mr. Hester does too. Mr. Doyle does, too.
19 Thank you.

20 But most of all, Judge, I ask you for a sentence that is
21 reasonable and that fits this conduct, this individual, and
22 this case.

23 But thank you again. And it is always a pleasure to
24 appear in front of you, Judge. Thank you.

25 THE COURT: Thank you, sir.

1 Mr. Haag, I cannot remember a case in 27 years that has
2 given me the difficulty that this case is giving me. Anybody
3 can believe it or not. I at this moment do not know what I am
4 going to do. I know what the parameters are.

5 On the side -- Well, let me ask you about -- what about
6 the 17-year sentence recommended by the Government up in
7 Massachusetts? When I saw that in the paper, I immediately
8 called the judge and said, "What the hell is going on?" What
9 makes this case so different?

10 MR. HAAG: Your Honor, I can't speak to the
11 rationale behind the 17-year recommendation. My guess would
12 be that because that was a plea agreement situation, there
13 must have been some sort of mitigating factors in terms of
14 entrapment, the Defendant's mental condition, something that
15 gave the Government in that case pause to believe that at a
16 jury trial situation they might not receive a favorable
17 verdict, or that the Defendant's conduct warranted that
18 sentence. I don't think any of the factors that were at play
19 in this case are at play in this case.

20 THE COURT: He was ready to fly his plane into the
21 capitol.

22 MR. HAAG: He was, Your Honor, but in that case the
23 Government had control of the situation the entire time.

24 THE COURT: Yeah.

25 MR. HAAG: In this case, as the Court pointed out,

1 but for the grace of God this would have ended up with a
2 completed explosion, deaths, casualties. The only thing that
3 prevented this from occurring was a report from private
4 citizens and the action of law enforcement, and that is it.
5 There was nothing on Mr. Aldawsari's part that shows this
6 Court that he had any intention at all of turning back from
7 the course that he set for himself in his journals.

8 THE COURT: The two bookends are he was 20 years old
9 and he slipped away from everything that he had been, although
10 he was highly educated, into this obsession. He was 20 years
11 old. No trouble before. Family letters from them.

12 On the other end of the bookend is he would have done it.
13 I listened to the evidence. Without a doubt in my mind, had
14 he gotten the phenol there would be dead people as a result.
15 Is there a middle ground?

16 MR. HAAG: Your Honor, I think in a situation such
17 as this, there is not. And I think that is what the
18 Guidelines -- I think that is what the Guidelines understand
19 is the special problems that terrorists pose in terms of
20 rehabilitation, recidivism. When you have --

21 THE COURT: But in let me ask you this. In any
22 event, whether he gets 10 years or he gets life imprisonment,
23 at some time he is going back to Saudi Arabia under the
24 treaty. Right?

25 MR. HAAG: Your Honor, in this case if he received a

1 life sentence, I would hope the United States would fight to
2 keep him in jail for his entire life. And as we have pointed
3 out, our position is that he poses a threat to American
4 citizens not only here but especially to American citizens who
5 are stationed abroad.

6 THE COURT: All right. Anything else?

7 MR. HAAG: I would just like to comment just briefly
8 on the Defense's argument about the *Polk* case and talk a
9 little bit about how that is readily distinguishable from what
10 we have here.

11 THE COURT: Yes, sir.

12 MR. HAAG: In the *Polk* case, the Guideline range in
13 that case was 168 to 210 months, and the Court in that case
14 imposed a sentence of 189 months.

15 If this Court were to look at the Guidelines, then, in
16 order to get that Sentencing Guideline range, the district
17 court in that case, for whatever reason, must have determined
18 that the terrorism enhancement in Section 3A1.4 did not apply.

19 So we have two distinguishing factors. Number one, the
20 terrorism enhancement in that case was deemed not to apply
21 where here it clearly does. And the second is the Sentencing
22 Guideline range in that case is much, much lower. And the
23 court sentenced within the Guidelines in that case. Here the
24 Guideline range is life imprisonment, and that is what we
25 believe distinguishes the *Polk* case.

1 I have a couple of more points, Your Honor. They,
2 frankly, do reiterate the Sentencing Guidelines memorandum, so
3 if --

4 THE COURT: I have read it twice.

5 MR. HAAG: But we believe that based upon the nature
6 and circumstances of the offense, the deterrent effect, and,
7 most importantly, to prevent Mr. Aldawsari from committing
8 future crimes, that a life sentence is mandated in this case.

9 Thank you.

10 THE COURT: Mr. Aldawsari, do you want to come up
11 with your counsel?

12 What do you have to say to me, sir?

13 THE DEFENDANT: Shortly, I really would like to
14 apologize for what has happened. Hopefully no harm or injury
15 was caused to the United States. I believe that, like -- I do
16 not have any criminal history in the United States or
17 elsewhere.

18 I think in this time I am only thinking about my family
19 only, especially that I was separated from my family since I
20 was arrested February 23, 2011.

21 I am sorry again, and I am sorry for the conduct and
22 everything that happened. I apologize. I thank you.

23 THE COURT: What happened, Mr. Aldawsari? What
24 happened between Vanderbilt and Texas Tech?

25 THE DEFENDANT: Well, I cannot recall the events

1 that took place at that time. I think I was very happy at
2 that time at Vanderbilt in Nashville, Tennessee. I was social
3 and I didn't have that much of social issues. I missed that
4 good life that I had in Nashville, Tennessee.

5 When I was transferred to Texas Tech, my life had
6 changed. I went under 80 percent, 180 degrees. Everything
7 was changed. I didn't have the same chances and the same good
8 life that I used to have. It was something very different for
9 me to experience.

10 At the end, I think maybe there was something wrong that
11 just did happen when I was in Texas Tech in Lubbock, and that
12 did not appear before that time. Maybe all that time period I
13 missed my family, I missed my relatives, and my friends.

14 The only thing I can say is that I apologize. I am
15 sorry. I am happy that I did not commit the crime that could
16 cause harm or injury to anyone. I am sorry.

17 Actually what happened at Texas Tech was exactly that
18 there were only some bad writings. These bad writings did
19 happen and took place at Texas Tech only in 2010.

20 The only thing that I can say, I did not have the weapon
21 of mass destruction that can cause the harm or injury to the
22 United States. In West Texas I couldn't practice my faith, I
23 didn't have that much of friends, I was alone, I was isolated
24 for a long time. Then some bad writings started to appear
25 because of watching TV programs all that time.

1 I know maybe some of these bad writings translate to some
2 actions. I am sorry for these bad actions, but at the end
3 none of these bad actions did cause harm or injury to the
4 United States.

5 THE COURT: Mr. Aldawsari, I still remember your
6 phone calls, how angry you were that they had messed up on the
7 phenol order.

8 THE DEFENDANT: Yes. I did cancel the phenol order
9 I think sometime in February 20th or the 21st.

10 The thing is I think I have struggled with myself maybe
11 because I had some mental issues at that time. I did seek
12 some mental help. I tried to communicate with psychologists
13 before February 23. The thing is I think I was a bit
14 depressed at that time, and because of my depression and
15 social issues I couldn't make good decisions. And I am sorry
16 again.

17 THE COURT: All right, sir.

18 I am going to adopt the factual findings of the Probation
19 Office as set out in the presentence report.

20 I have considered all the factors of 3553. I have
21 considered your youth at the time. I have considered the
22 self-induced attitude, for want of a better word, that you got
23 there, and I can even kind of understand the progression. I
24 think -- I think you were self-willed into the attitude that
25 you took, but I think you believed it.

1 All those factors would indicate that there is some
2 reason to depart downward, but the bottom line is but by the
3 grace of God there would be dead Americans everywhere, you
4 would have done it, and you were doing it all by yourself. No
5 one was encouraging you. Every step of the way it was you and
6 you alone.

7 Accordingly, it is the judgment of the Court that you be
8 sentenced to the custody of the Bureau of Prisons for the rest
9 of your life.

10 The usual conditions of supervised release, which will be
11 a term of five-years, will apply, including mental health
12 treatment as necessary.

13 \$100 assessment of the crime victim fund is required.

14 There will be no fine. None will be paid.

15 You have the right to appeal, and should you appeal the
16 Clerk will send the presentence report and presentence
17 memorandums to the Court of Appeals under seal.

18 Thank you very much. Thank you.

19 MR. COGDELL: In terms of recommendation, it is my
20 recollection, and I could be wrong, but I do not believe that
21 the Government objected to our request or will not object to
22 our request of Springfield because it provides for
23 psychological care and treatment, Your Honor.

24 THE COURT: I will certainly recommend that. The
25 Bureau of Prisons is the Executive Branch, but they have been

1 very good about following my recommendations.

2 MR. COGDELL: Yes, sir.

3 THE COURT: Gentlemen, you all did a very good job
4 of representing your client. I appreciate it, and I enjoyed
5 it.

6 All right. Anything else before I --

7 MR. COGDELL: For the record, Your Honor, and I
8 think -- And I am not sure how it played in the Northern
9 District, but we will be filing a motion to withdraw. It is
10 my belief that Patton Boggs is a firm that will file a notice
11 of appearance and assist Mr. Aldawsari from henceforth.

12 THE COURT: If you will send me a courtesy copy, I
13 will sign it and email it.

14 MR. COGDELL: Yes, sir.

15 THE COURT: Thank you.

16 (End of hearing.)

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1 I HEREBY CERTIFY THAT THE FOREGOING IS A
2 CORRECT TRANSCRIPT FROM THE RECORD OF
3 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.
4 I FURTHER CERTIFY THAT THE TRANSCRIPT FEES
5 FORMAT COMPLY WITH THOSE PRESCRIBED BY THE
6 COURT AND THE JUDICIAL CONFERENCE OF THE
7 UNITED STATES.

8
9 S/Shawn McRoberts

12/4/2012

10 _____DATE_____
11 SHAWN McROBERTS, RMR, CRR
12 FEDERAL OFFICIAL COURT REPORTER
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